PRESIDENT'S OFFICE

No. 1523.
4 October 1995

NO. 60 OF 1995: ELECTRICITY AMENDMENT ACT, 1995.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

<< >> Words between pointed brackets indicate insertions in existing enactments.

ACT

To amend the Electricity Act, 1987, so as to declare the National Electricity Regulator a juristic person; to make provision for the appointment, conditions of employment and functions of the chief executive officer and employees of the said National Electricity Regulator; and to make provision for the funding and accountability of and reporting by the said National Electricity Regulator; and to make provision for matters in connection therewith.

(English text signed by the President.)
(Assented to 28 September 1995.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 41 of 1987, as amended by section 1 of Act 46 of 1994

1. Section 1 of the Electricity Act, 1987 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the insertion before the definition of "consumer" of the following definition:

" <<'chief executive officer' means the chief executive officer pointed in terms of section 5A(1);>>"; and

(b) by the insertion after the definition of "Eskom" of the following definition:

" '<<financial institution' means a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);>>".

Insertion of section 2A in Act 41 of 1987

2. The following section is hereby inserted in the principal Act, after section 2:

"Juristic personality of regulator

<<2A. The regulator shall be a juristic person>>.".

Insertion of sections 5A, 5B, 5C and 5D in Act 41 of 1987

3. The following sections are hereby inserted in the principal Act after section 5:

"Appointment and functions of chief executive officer

<<5A. (1) The Minister shall appoint a member of the regulator as chief executive officer of the regulator.

(2) The chief executive officer-

(a) shall be responsible for the management of-

(i) the affairs of the regulator in accordance with the provisions of this Act and subject to the directions of the Minister and the regulator; and

(ii) administrative control over the employees appointed under paragraph (b);

(b) may, subject to paragraph (c) and on such conditions as the regulator may determine, appoint such employees as may be required to perform the work connected with the functions of the regulator;

(c) shall pay such employees such remuneration, allowances, subsidies and other benefits as the regulator may determine in accordance with a remuneration structure approved from time to time by the Minister with the concurrence of the Minister of Finance;

(d) may from time to time on such conditions as he or she may determine-

(i) provide collateral security, including guarantees, to a financial institution in respect of a loan granted to any employee of the regulator by such financial institution to enable such employee to acquire, improve or enlarge immovable property for the purposes of occupation; and

(ii) establish and manage or cause to be managed medical aid schemes and bursary schemes for purposes of study for such employees and their dependants.>>

Funds of regulator

<<5B. (1) The funds of the regulator shall consist of-

(a) licence fees obtained under subsection (2);

(b) donations or contributions received from any person, institution, government or administration; and

(c) interest on investments.

(2) The Minister may, on receipt of the business plan and statement referred to in subsection (5)(b), by notice in the Gazette prescribe licence fees that are payable by licensed generators of electricity.

(3) Licence fees referred to in subsection (2) shall-

(a) only be imposed after-

(i) the amount and composition thereof and motivation therefor, based on the business plan submitted in terms of subsection (5) (b), have been published for comment and any resulting comment has been considered; and

(ii) the business plan and statement referred to in subsection (5)(b) have been approved;

(b) be valid for the period specified in the notice referred to in subsection (2);

(c) be payable in respect of the electricity, calculated in kilowatt hours, generated for supply by any licensee concerned during the previous calender year;

(d) be payable by such licensee at the times and in the instalments determined by the regulator; and

(e) bear interest, in the case of non-payment or late payment, at such rate as the regulator may determine.

(4)(a) The regulator-

(i) shall utilise its funds to defray expenses in connection with the performance of its functions; and

(ii) may, with the approval of the Minister, granted with the concurrence of the Minister of Finance, establish and manage or cause to be managed a pension or provident fund or an alternative pension or provident fund for its employees.

(b) Donations and contributions referred to in subsection (1)(b) shall-

(i) only be accepted with the approval of the Minister, granted with the concurrence of the Minister of Finance; and

(ii) be utilised in accordance with the conditions determined by the donor or contributor concerned with such approval and concurrence.

(5) The regulator-

(a) may, with the approval of the Minister, granted with the concurrence of the Minister of Finance, authorise the chief executive officer to invest any unspent portion of the funds of the regulator: Provided that any surplus at the end of a financial year shall be carried over to the next financial year and be utilised to defray expenses incurred by the regulator during that financial year;

(b) shall during each financial year, at such time as the Minister may determine, submit a business plan and statement of the regulator's estimated income and expenditure during the following financial year to the Minister for his or her approval, granted with the concurrence of the Minister of Finance;

(c) shall for the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), be deemed to be an institution contemplated in section 10(1)(cA)(i) of that Act>>.

Accounting and accountability

<<5C. (1) The chief executive officer shall be the accounting officer of the regulator and shall-

(a) open an account in the name of the regulator with a financial institution and shall deposit therein all moneys received in terms of section 5B(1);

(b) cause proper records to be kept of all financial transactions, assets and liabilities of the regulator; and

(c) as soon as possible after the end of each financial year, cause to be prepared a statement of the income and expenditure of the regulator for that financial year and a balance sheet of its assets and liabilities

as at the end of that financial year.

(2) The records, statement and balance sheet referred to in subsection (1) shall be audited by the Auditor-General.

(3) The financial year of the regulator shall be the period ending on 31 March in each year>>.

Reporting

<<5D. (1) The regulator shall-

(a) furnish the Minister with such information and particulars as he or she may from time to time require in connection with the affairs and financial position of the regulator; and

(b) annually, within six months after the end of the financial year, submit to the Minister a report with regard to the functions, affairs and financial position of the regulator in respect of that financial year.

(2) Without derogating from the generality of the provisions of subsection (1) (b), the annual report referred to in that subsection shall inter alia include-

(a) an audited balance sheet and statement of income and expenditure, including any notes thereon and documents annexed thereto whereby relevant information is provided;

(b) particulars of any donations or contributions received under section 5B(1)(b);

(c) information regarding licences granted, renewed, amended, transferred, ceded, suspended or withdrawn;

(d) the report on the audit referred to in section 5C(2);

(e) a report regarding the execution of the business plan of the regulator;

(f) a report regarding the envisaged strategies of the regulator; and

(g) such other information as the Minister may from time to time determine.

(3) The annual report submitted in terms of subsection (1)(b) shall be tabled in Parliament by the Minister within 14 days after receipt thereof or, if Parliament is not then in session, within 14 days after the commencement of the next ensuing session>>.".

Amendment of section 28 of Act 41 of 1987, as amended by section 10 of Act 46 of 1994

4. Section 28 of the principal Act is hereby amended by the deletion of paragraph (p) of subsection (1).

Short title

5. This Act shall be called the Electricity Amendment Act, 1995.